

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.454/Bang/2023
Assessment Year: 2007-08

Smt. Gali Vanaja No.52, Siruguppa Road Havambavi Bellary 583 103 Karnataka PAN NO : AIHPG0429L	Vs.	Deputy Commissioner of Income-tax Central Circle 1(3) Bangalore
APPELLANT		RESPONDENT

ITA No.370/Bang/2023
Assessment Year: 2008-09

Deputy Commissioner of Income-tax Central Circle 1(3) Bangalore	Vs.	Smt. Gali Vanaja Bellary 583 103 Karnataka
APPELLANT		RESPONDENT

CO No.3/Bang/2023 in ITA No.370/Bang/2023 Assessment Year: 2008-09
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Smt. Gali Vanaja Bellary 583 103 Karnataka	Vs.	Deputy Commissioner of Income-tax Central Circle 1(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri H. Siva Prasad Reddy, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	03.08.2023
Date of Pronouncement	:	17.08.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

ITA No.370/Bang/2023 by revenue and CO No.3/Bang/2023 by assessee are for the assessment year 2008-09, directed against order of CIT(A) dated 13.3.2023 and ITA No.454/Bang/2023 by assessee for the assessment year 2007-08 directed against order of CIT(A) which is also dated 13.3.2023.

2. First, we will take up ITA No.454/Bang/2023 for the assessment year 2007-08.

2.1 There was a delay of 31 days in filing appeal before this Tribunal. The assessee filed a condonation petition stating that the assessee has handed over the order of Id. CIT(A) to her husband G. Karunakara Reddy for taking necessary action to file appeal before Id. CIT(A). Mr. G. Karunakar Reddy who is a politician and contesting the election for Karnataka Assembly from Harpanhalli constituency handed over the CIT(A) order and relevant documents to his tax consultant to file appeal before the Tribunal. In the meantime, during April, 2023 to May, 2023, her husband was busy with election activities and he instructed the Tax Consultant to discuss the case and reminded in time to file appeal before this Tribunal. The Tax Consultant forgotten to remind Mr. G. Karunakar Reddy as he was also busy during the elections. As soon as Tax Consultant recommended him to file appeal before this Tribunal, same has been filed on 15.6.2023 that was caused delay of 31 days in filing appeal before this Tribunal and prayed that the delay may be condoned in the interest of justice.

2.2 We have heard the rival submissions and perused the materials available on record. In our opinion, there is short delay of 31 days in filing appeal before this Tribunal. The assessee explained that the Id. CIT(A)'s order has been handed over to her husband Mr. G. Karunakar Reddy and in turn he handed over all the documents

relating to filing appeal to his tax consultant. However, due to assembly elections in Karnataka and since he was the candidate for MLA elections from Harpanhalli constituency during April, 2023 to May, 2023, he was busy in said Election activities. He lost his sight on this issue and later when it was reminded by the Tax Consultant to file appeal before this Tribunal, he took steps to file the appeal. In our opinion, there is a good and sufficient reason in belatedly filing this appeal before this Tribunal by 31 days. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. Master Katigi & Ors. (167 ITR 471) (SC), wherein laid down the principle that the expression "reasonable cause" should be liberally construed so as to advance cause of substantial justice. Being so, in the present case, the delay was not deliberate or on account of culpable negligence or on account of malafide. The assessee does not stand to benefit by resorting to file the appeal belatedly. In fact, she runs a serious risk in filing the appeal belatedly. Considering the short delay of 31 days and the reasons advanced by the assessee, we condone the delay of 31 days in filing the appeal before this Tribunal. Accordingly, the delay is condoned and appeal is admitted for adjudication.

3. The present appeal is filed by the assessee against the order of the Learned CIT(A) dated, 13-03-2023 in ITA No.CIT(A)-11/BNG/10007/2006-03 passed consequential to the order of the Tribunal in ITA Nos 1006-1008/Bang/2013 remanding the appeals back to the file of the Learned CIT(A) for fresh adjudication.

3.1 The only ground in this appeal is with regard to sustaining addition of Rs.10 lakhs out of Rs.44,31,030/- made by AO towards unproved trade liabilities.

3.2. The facts of the case relevant necessary for adjudication of the present appeal are that Search u/s 132 of the Income-tax Act, 1961 ['the Act' for short] was conducted in the case of G Karunakar Reddy, husband of the Assessee, on 26-10-2007 at Bellary. The Learned AO issued the Notices u/s 153C dated, 14-08-2008 for the AYs, 2002-03 to 2007-08 on the purported ground that certain documents belonging to the Assessee (unsearched person) were seized during the said search.

3.3. In consequence of the said Notices issued u/s 153C of the Act, the assessment orders for the AYs, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 came to be passed u/s 153C r.w.s 143(3) of the Act dated, 31-12-2009. For the AY 2008-09, being the year of search, the Learned AO issued the Notice u/s 143(2) and passed the order u/s 143(3) of the Act dated 31.12.2009 of the Act. The details of assessments passed u/s 153C / 143(3) of the Act as above-mentioned are tabulated below for the sake of ready reference:

Sl. No	AY	Section under which the order was made	Details of additions made & Appeal Status	Total Addition on account of Unproved Trade Liability u/s 41(1) (in Rs.)
(i)	2002-03	153C	No additions - returned income accepted.	
(ii)	2003-04	153C	No additions - returned income accepted.	-
(iii)	2004-05	153C	No additions - returned income accepted.	
(iv)	2005-06	153C	No additions - returned income accepted.	
(v)	2006-07	153C	Addition of Rs.1,35,10,378/-	80,23,673
(vi)	2007-08	153C	Addition of Rs.1,12,29,360/-	44,31,030

(viii)	2008-09	143(3)	Addition Rs. 1,88,48,325/-	of	1,88,48,325
Total					3,13,04,028

3.4. The assessment orders for the AYs 2006-07, 2007-08 & 2008-09 were contested before the ld. Commissioner of Income Tax (Appeals) in *ITA Nos. 503, 494 & 504/ CIT(A)-VI/B'lore/ 09-10*. The appeals came to be dismissed vide order dated 31-01-2013.

3.5 On further appeal by the assessee, the Tribunal vide its order in *ITA Nos.1006 to 1008/Bang/2013, dated, 22-02-2019* dismissed the appeals for non-prosecution. The assessee filed the Miscellaneous Petitions for recall of the above-mentioned *ex-parte* orders and the same came to be allowed vide orders in *MP Nos. 49 to 51/Bang/2019 (In ITA Nos.1006 to 1008/Bang/2013)*.

3.6. Subsequently, the Tribunal set aside the orders of the Learned CIT(A) vide its order dated, 27-11-2019 in *ITA Nos.1006 to 1008/Bang/2013* and restored the entire disputed issues for fresh adjudication to the file of the Learned CIT(A) directing as under:

- (1) *To decide the validity of the assessments u/s 153C r.w.s 143(3), and;*
- (ii) *If the assessee fails on the technical Ground, then decide the case on merits.*

3.7 In consequence of the above said order of this Tribunal, the Learned CIT(A) passed the order dated, 13-03-2023 partly allowing the appeal on merits sustaining the addition to the extent of Rs.10,00,000/- out of Rs.44,31,030/- added in the assessment order as unproved trade liability. The learned CIT(A) has sustained the addition

of Rs.10,00,000/ after noticing that no addition for the subject assessment year could be sustained applying the guidelines of this Tribunal in the connected case of Smt. G. Vijaya in ITA No.947 & 948/Bang/2013 order dated, 28-04-2022 on identical set of facts.

CASE BEFORE THIS TRIBUNAL:

3.8 The addition of Rs.44,31,030/- in the case of the assessee was made on IDENTICAL GROUNDS vis-a-vis the addition of Rs.6,26,74,760/- made in the connected case of Smt. Vijaya, which came to be contested before this Tribunal in ITA Nos.947 & 948/BANG/2013 vide order dated 28.4.2022. In an identical set of facts, this Tribunal in the said connected case of Smt. Vijaya sustained addition of Rs.50,00,000/- after taking into account the additional income of Rs.1,00,00,000/-declared in the return of income of the said assessee over & above the regular income in view of the certain deficiencies in maintenance of books of account. In other words, this Tribunal came to the reasoned conclusion in the said case that overall addition of Rs.1,50,00,000/- (Rs.1,00,00,000/-declared in the return of income + Rs.50,00,000/- sustained) would meet the ends of justice considering the total addition of Rs.6,26,74,760/- made in the assessment order. Para 18 of pages 16 & 17 of the order of this Tribunal in the said case of Smt. Vijaya is as under:

"18. The fact remains that the liability of Rs.11.04 crores is shown in the books of accounts. It has arisen out of trading activities carried on by the assessee. Hence it cannot be treated as unproved liability. The apprehension entertained by the AO is that the liabilities could not have existed as shown by the assessee. However, it is a fact that the AO has not brought any material on record in support of his apprehension. It is well settled proposition of law that the apprehension, howsoever strong, cannot substitute material evidences. In so far as the trading liabilities are concerned, it could be assessed only u/ s

41(1) of the Act, when it ceases to exist. In our considered view, the inference drawn by the AO was that the suppliers of services are not having enough means to provide credit to the assessee. However, the AO himself was not aware of the details about the suppliers of the services. Without those details, we are unable to understand as to how the AO could have entertained such kind of views. We also notice that the A.O. has not established that the liability has ceased to exist, which would warrant invoking of provisions of section 41(1) of the Act. Accordingly, in our view, the A.O. was not justified in treating part of liabilities, i.e., Rs.6,26,74,760/-, as unproved on presumptions, surmises and conjectures."

3.9 The Id. A.R. submitted that it is not disputed that the facts of the case are identical to the said connected case of Smt. Vijaya. As mentioned in para 16 of pages 22 & 23 of the learned CIT(A)'s order itself, a total addition of Rs.75,00,000/- in the hands of the assessee would be justified without considering Rs. 1,00,00,000/ declared as additional income in return of income applying the guidelines laid down by this Tribunal in the connected case of Smt. Vijaya. The Id. A.R. submitted that since the assessee had already declared Rs.1,00,00,000/- in the return of income, no further addition was justified applying the guidelines of this Tribunal in the connected case of Smt. Vijaya. For the sake of ready reference, the quantum of addition that may be justified in the case of the assessee applying the guidelines of this Tribunal in the said connected case is as under:

Sl. No.	Particulars	In the connected case of the Smt. Vijaya (in Rs.)	In the case of the Assessee (in Rs.)
(i)	Addition made on the Ground of unproved trade liability - section 41(1).	6,26,74,760	3,13,04,028 (For 3 years from 2006-07 to 2008-09 as mentioned in para 15 of page 2: of CIT(A) order.)

(ii)	Additional Income declared in the return of income.	1,00,00,000	1,00,00,000 (Declared in the return of income filed for the AY 2008-09)
(iii)	Addition sustained by the Hon'ble Tribunal.	50,00,000	
(iv)	Total addition sustained by the Hon'ble Tribunal [(ii) + (iii)]	1,50,00,000	
(v)	Total Addition that may be sustained applying the ratio/guidelines in the connected case of Smt. Vijaya.	24% of the addition made	25,00,000

3.10. He thus submitted that the assessee had declared Rs.1,00,00,000/- as additional income in the return of income filed for the AY 2008-09, which is more than the addition of Rs.75,00,000/- that could have been made applying the ratio/guidelines of the Hon'ble Tribunal in the said-connected case of Smt. Vijaya.

3.11. The overall addition made in the case of the assessee on the issue of unproved trade liability for the AYs 2006-07 to 2008-09' is about Rs.3.13 crores, which is roughly about 50% of the addition made (Rs.6.63 crores) in the connected case of Smt. G. Vijaya as mentioned in para 15 of pages 22 of the Learned CIT(A) order. Even considering the entire addition for all the concerned AYs from 2006-07 to 2008-09, overall addition that may be sustained would be Rs.75,00,000/- applying the guidelines of this Tribunal in the connected case of Smt. Vijaya.

3.12. In the light of the above, the ld. A.R. submitted that the Learned CIT(A) is not justified in sustaining the addition of

Rs.10,00,000/- in the case of the assessee after noticing that the facts of the case are identical to the connected case of Smt. G. Vijaya and Rs.1,00,00,000/- was already declared in the return of income filed.

4. The ld. D.R. submitted that assessee failed to discharge her onus of proving the above trade liabilities both before the AO as well as before ld. CIT(A) and according to the ld. D.R., the assessee has to prove the burden cast upon her to prove the identity and creditworthiness of these parties as well as genuineness of transactions by placing reliance on the order of the ld. CIT(A), wherein he referred to the order of this Tribunal in the case of Smt. G. Vijaya in ITA No.947 & 948/Bang/2013 dated 28.4.2022 for the AYs 2007-08 & 2008-09, which itself is bad in law. As such, the assessee is having no case in her favour and these unproved trade liabilities at Rs.80,24,673/- was outstanding as payable to labourers for more than iron ore crushing and transportation as on 31.3.2007. The labourers were persons with meagre means and resources and therefore, they could not have waited for a month to receive the wages as such, the decision of Tribunal in the case of Smt. G. Vijaya cited (supra) have no application.

5. We have heard the rival submissions and perused the materials available on record. In this case in assessment year 2007-08, the trading results of the assessee are as follows:

Gross contract receipts	Rs.6,96,23,365/-
Interest income	<u>Rs. 18,07,048/-</u>
	Rs.7,14,30,413/-
Total expenditure claimed by assessee	<u>Rs.6,61,68,831/-</u>
Net profit	<u>Rs. 52,61,582/-</u>

5.1 Consequent to search action in case of her husband Shri G. Karunakar Reddy, notice has been issued to the assessee u/s 153A of the Act and assessee filed the return of income on 6.10.2009 declaring income of Rs.52,61,582/-. While framing the assessment, the AO made following additions:

Suppression of bank balance	Rs.67,98,330/-
Unproved trade liabilities	<u>Rs.44,31,030/-</u>
	<u>Rs.1,12,29,360/-</u>

5.2 The addition made towards suppression of bank account at Rs.67,98,330/- was deleted by the Id. CIT(A) for which revenue is not in appeal before us. Out of unproved trade liabilities of Rs.44,31,030/-, the Id. CIT(A) has deleted Rs.34,31,030/- and sustained only Rs.10 lakhs, by placing reliance on the earlier order of the Tribunal in the case of Smt. G. Vijaya cited (supra), wherein held as under:

“17. We heard the parties on this issue and perused the record. The admitted fact is that the outstanding liability of Rs.11.04 crores disclosed by the assessee in the balance sheet as on 31.3.2008 pertains to trading liabilities and they arise out of trading results. The AO has considered the amount of Rs.1,72,75,247/- only, as not arising out of trading results. There is no dispute with regard to the fact that the assessee has maintained books of accounts and the Balance sheet has been prepared out of the book results only. The Ld. A.R. also submitted that the assessee was also handicapped in providing relevant information and explanations, since the books of accounts have been seized by the various statutory authorities. Accordingly, it could be understood that the assessing officer could not examine relevant books of accounts. Accordingly, it can be seen that the AO has considered the amount of Rs.1,72,75,247/- as not arising out of trading transactions on surmises only. In our view, without examining the books of account and the break-up details of trading liabilities, one could not come to the conclusion that the above said amount of Rs.1,72,75,247/- does not represent trading liability.

18. The fact remains that the liability of Rs.11.04 crores is shown in the books of accounts. It has arisen out of trading activities carried on by the assessee. Hence it cannot be treated as unproved liability. The apprehension entertained by the AO is that the

liabilities could not have existed as shown by the assessee. However, it is a fact that the AO has not brought any material on record in support of his apprehension. It is well settled proposition of law that the apprehension, howsoever strong, cannot substitute material evidences. In so far as the trading liabilities are concerned, it could be assessed only u/s 41(1) of the Act, when it ceases to exist. In our considered view, the inference drawn by the AO was

that the suppliers of services are not having enough means to provide credit to the assessee. However, the AO himself was not aware of the details about the suppliers of the services. Without those details, we are unable to understand as to how the AO could have entertained such kind of views. We also notice that the A.O. has not established that the liability has ceased to exist, which would warrant invoking of provisions of section 41(1) of the Act. Accordingly, in our view, the A.O. was not justified in treating part of liabilities, i.e. Rs.6,26,74,760/-, as unproved on presumptions, surmises and conjectures.

19. At the same time, there are lacunae on the part of the assessee also, i.e., the assessee also could not furnish books of accounts and other details, since they have been seized by other statutory authorities. Hence, the action of the A.O. making addition could not found fault with altogether. The only point is that the quantum of addition determined by the AO is not supported by any evidence and it has been made on presumptions only. In view of the deficiency on the part of the assessee, in our view, some addition is called for in order to take care of deficiencies, if any. Since the assessee could not furnish information and explanations relating to trading liabilities outstanding as on 31.3.2008 before the A.O., we are of the view that this issue could be resolved by making addition on estimated basis in order to take care of revenue leakage if any.

20. We have earlier noticed that the assessee has surrendered a sum of Rs.1.00 crore in order to take care of deficiencies in the maintenance of books of accounts and the assessee has already offered the same. Accordingly, we are of the view that this issue would meet ends of justice, if the addition made by the A.O. is restricted to Rs.50 lakhs and the same, in our view, would take care of further deficiencies, revenue leakages, if any, in the maintenance of books of accounts.

21. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in AY 2008-09 and direct the A.O. to restrict the addition to Rs.50 lakhs.”

5.3 In our opinion, facts and circumstances of the present case are similar to that considered by Tribunal in case of Smt. G. Vijaya cited (supra), which are as follows:

Sl. No.	Events related to the Assessee – Mrs. G. Vanaja	Events occurring in the connected case – Mrs. G. Vijaya
i.	Search conducted u/s 132 in the group cases on 26.10.2007 – Search in the case of G. Karunakara Reddy, husband of the assessee where the alleged documents are seized.	Search conducted u/s 132 in the group cases on 26.10.2007 of G. Somashekar Reddy, husband of G. Vijaya where the alleged documents are seized.
ii.	Notice u/s 143(2) was issued on 18.9.2009 to the assessee	Notice u/s 143(2) was also issued on the same date i.e. 18.9.2009
iii.	The assessing officer issuing the notice in both the cases is one & the same i.e., the Deputy Commissioner of Income Tax, Central Circle-1(3), Bengaluru.	
iv.	Both the assesseees have carried out transportation work to M/s. Sree Raghavendra Constructions as mentioned in the respective assessment orders. The accounts are maintained & audited u/s 44AB of the Act in both the cases. Both the assesseees declared additional income of Rs.1 crore each for the AY 2008-09 during the search u/s 132(4) and filed their respective returns of income admitting the said additional income tax.	
v.	In both the cases, additions are made in identical grounds considering the transportation charges received from the said M/s. Sree Raghavendra Constructions and the expenditure incurred.	

5.4 Being so, in our opinion, placing reliance by ld. CIT(A) on the above order of the Tribunal in case of Smt. G. Vijaya cited (supra) cannot be found faulted and there is a basis for his decision and we do not find any infirmity in the same and the same is confirmed and the appeal of the assessee in ITA No.454/Bang/2023 is dismissed.

ITA No.370/Bang/2023 & CO No.3/Bang/2023:

6. The revenue is in appeal before us for sustaining only Rs.25 lakhs out of addition made by AO at Rs.1,88,48,325/- towards unproved trade liabilities, thereby deleting an amount of Rs.1,63,48,325/- and the assessee filed cross objection for sustaining addition of Rs.25 lakhs.

6.1 The present Cross Objection (CO) is filed against the order of the Learned CIT(A) dated, 13-03-2023 passed consequential to the order of this Tribunal in ITA Nos 1006-1008/Bang/2013 remanding the appeals back to the file of the Learned CIT(A) for fresh adjudication.

6.2. The ld. A.R. submitted that the facts of the case relevant and necessary for adjudication of the present CO are that Search u/s 132 of the Act was conducted in the case of G Karunakar Reddy, husband of the Assessee, on 26-10-2007 at Bellary. The Learned AO issued the Notices u/s 153C of the Act dated 14-08-2008 for the AYs 2002-03 to 2007-08 on the purported ground that certain documents belonging to the assessee (unsearched person) were seized during the said search.

6.3. He submitted that in consequence of the said Notices issued u/s 153C of the Act, the assessment orders for the AYs, 2002-03, 2003-04, 2004-05, 2005-6, 2006-07 and 2007-08 came to be passed u/s 153C r.w.s 143(3) dated, 31-12-2009. For the AY, 2008-09, being the year of search, the Learned AO issued the Notice u/s 143(2) and passed the order u/s 143(3) dated 31-12-2009 of the Act. The details of assessments passed u/s 153C / 143(3) of the Act as above-mentioned are tabulated below for the sake of ready reference:

Si. No	AY	Section under which the order was made	Details of additions made & Appeal Status	Total Addition on account of Unproved Trade Liability u/s 41(1) (in Rs.)
(i)	2002-03	153C	No additions - returned income accepted.	
(ii)	2003-04	153C	No additions - returned income accepted.	
(iii)	2004-05	153C	No additions - returned income accepted.	
(iv)	2005-06	153C	No additions - returned income accepted.	
(v)	2006-07	153C	Addition of Rs.1,35,10,378/-	80,23,673
(vi)	2007-08	153C	Addition of Rs.1,12,29,360/-	44,31,030
(viii)	2008-09	143(3)	Addition of Rs. 1,88,48,325 / -	1,88,48,325
Total				3,13,04,028

6.4. The ld. A.R. submitted that the assessment orders for the AYs 2006-07 to 2008-09 where the additions were made, were contested before the Learned' Commissioner of Income Tax (Appeals) in ITA Nos. 503, 494 & 504/CIT(A)-VI/B'lore/09-10. The appeals came to be dismissed vide order dated, 31-01-2013.

6.5. On further appeal by the assessee, the Tribunal, vide its order in ITA Nos.1006 to 1008/Bang/2013, dated 22-02-2019, dismissed the appeals for non-prosecution. The assessee filed the Miscellaneous Petitions for recall of the above-mentioned ex-parte orders and the same came to be

allowed vide orders in MP Nos. 49 to 51/Bang/2019 (In ITA Nos.1006 to 1008/Bang/2013).

6.6. Subsequently, the Tribunal set aside the orders of the Learned CIT(A) vide its order dated, 27-11-2019 in ITA Nos.1006 to 1008/Bang/2013 and restored the entire disputed issues for fresh adjudication to the file of the Learned Id. CIT(A) directing as under:

- (i) *To decide the validity of the assessments u/ s 153C r.w.s 143(3), and;*
- (ii) *If the assessee fails on the technical Ground, then decide the case on merits.*

6.7. The Id. A.R. submitted that in consequence of the above said order of the Tribunal, the Learned CIT(A) passed the order dated, 13-03-2023 partly allowing the appeal of the assessee, which is impugned by the Revenue (numbered as ITA No.370/BANG/2023) and the present CO is filed with respect to the appeal of the Revenue.

6.8. The Learned CIT(A) has partly allowed the appeal of the assessee but sustained Rs.25,00,000/- addition out of the total addition of Rs.1,88,48,325/- made in the assessment order on the ground that the same represented unproved trade liability. In the CO, the assessee contested the addition of Rs.25,00,000/- sustained by the Learned CIT(A).

6.9. The Id. A.R. briefly made submissions in support of the CO as under:

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6.10. He submitted that as could be seen from the submissions of the assessee made before the Learned CIT(A) and found reproduced in para 6.4 to 6.9 of pages 7 to 11 of the order, the addition of Rs.1,88,48,325/- in the case of the assessee was made on IDENTICAL GROUNDS vis-a-vis the addition of Rs.6,26,74,760/- made in the connected case of Smt. Vijaya, which came to be contested before the Tribunal in ITA No.947 & 948/BANG/2013. He submitted that in identical set of facts, the Tribunal in the said connected case of Smt. Vijaya sustained addition of Rs.50,00,000/- after taking into account the additional income of Rs.1,00,00,000/- declared in the return of income of the said assessee over & above the regular income in view of the certain deficiencies in maintenance of books of account. In other words, the Tribunal came to the reasoned conclusion in the said case that overall addition of Rs.1,50,00,000/- (Rs.1,00,00,000/- declared in the return of income + Rs.50,00,000/- sustained) would meet the ends of justice considering the total addition of Rs.6,26,74,760/ - made in the assessment order. He reproduced para 18 of pages 16 & 17 of the order of the Tribunal in the said case of Smt. Vijaya which is as under:

"18. The fact remains that the liability of Rs.11.04 crores is shown in the books of accounts. It has arisen out of trading activities carried on by the assessee. Hence it cannot be treated as unproved liability. The apprehension entertained by the AO is that the liabilities could not have existed as shown by the assessee. However, it is a fact that the AO has not brought any material on record in support of his apprehension. It is well settled proposition of law that the apprehension, howsoever strong, cannot substitute material evidences. In so far as the trading liabilities are concerned, it could be assessed only u/ s 41(1) of the Act, when it ceases to exist. In our considered view, the inference drawn by the AO was that the suppliers of services are not having enough means to provide credit to the assessee.

However, the AO himself was not aware of the details about the suppliers of the services. Without those details, we are unable to understand as to how the AO could have entertained such kind of views. We also notice that the A.O. has not established that the liability has ceased to exist, which would warrant invoking of provisions of section 41(1) of the Act. Accordingly, in our view, the A.O. was not justified in treating part of liabilities, i.e., Rs.6,26,74,760/-, as unproved on presumptions, surmises and conjectures."

6.11 The Id. A.R. submitted that it is not disputed that the facts of the case are identical to the said connected case of Smt. Vijaya. As mentioned in para 13.0 of pages 14 & 15 of the Learned CIT(A)'s order itself, a total addition of Rs.75,00,000/- in the hands of the assessee would be justified without considering Rs. 1,00,00,000/- declared as additional income in return of income applying the guidelines laid down by the Tribunal in the connected case of Smt. Vijaya. Since the assessee had already declared Rs.1,00,00,000/- in the return of income, no further addition was justified applying the guidelines of the Tribunal in the connected case of Smt. Vijaya. For the sake of ready reference, the Id. A.R. reproduced the quantum of addition that may be justified in the case of the assessee applying the guidelines of the Tribunal in the said connected case is as under:

Sl. No.	Particulars	In the connected case of the Smt. Vijaya (in Rs.)	In the case of the Assessee (in Rs.)
(i)	Addition made on the Ground of unproved trade liability - section 41(1).	6,26,74,760	1,88,48,325
(ii)	Additional Income declared in the return of income.	1,00,00,000	1,00,00,000
(iii)	Addition sustained by the Tribunal.	50,00,000	
(iv)	Total addition sustained by the Hon'ble Tribunal [(ii) + (iii)]	1,50,00,000	

(v)	Total Addition that may be Sustained applying the ratio/guidelines in the connected case of Smt. Vijaya.	24% of the addition made	45,23,000
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6.12 The ld. A.R. submitted that from the above it could be seen that the assessee had declared Rs.1,00,00,000/- as additional income in the return of income, which is more than the addition of Rs.45,23,000/- that could have been made applying the ratio/guidelines of the Tribunal in the said connected case of Smt. Vijaya.

6.13. He submitted that the overall addition made in the case of assessee on the issue of unproved trade liability for the AYs 2006-07 to 2008-09 is about Rs.3.13 crores, which is roughly about 50% of the addition made (Rs.6.63 crores) in the connected case of Smt. G. Vijaya as mentioned in para 13.01 of pages 14 & 15 of the ld. CIT(A) order. Even considering the entire addition for all the concerned AYs from 2006-07 to 2008-09, overall addition that may be sustained would be Rs.75,00,000/-applying the guidelines of the Tribunal in the connected case of Smt. Vijaya.

6.14. In the light of the above, he submitted that the Learned CIT(A) is not justified in sustaining the addition of Rs.25,00,000/- in the case of the assessee after noticing that the facts of the case are identical to the connected case of Smt. G. Vijaya and Rs.1 00,00,000/- was already declared in the return of income filed.

Revenue's Appeal.

7. The ld. A.R. submitted that as could be seen from the Grounds of appeal of the Revenue, it is not in dispute that the

Tribunal had decided an identical issue in the connected case of Smt. G. Vijaya for the AY 2008-09 as above-submitted. The Revenue has not made out how the present case differs from the connected case of Smt. G. Vijaya as far as facts are identical. In this regard he invited our attention to the paras.6.6, 6.7 and 6.8 of pages 8, 9 & 10 of the order of the Learned CIT(A) impugned by the Revenue, wherein the similarity of facts has been set out referring to the submissions of the assessee.

7.1 The ld. A.R. also made same submission as in assessment year 2008-09.

8. The ld. D.R. made similar submissions as made in assessment year 2008-09.

9. We have heard the rival submissions and perused the materials available on record. Facts of the present case are similar to assessment year 2008-09. More so, the assessee's P&L account shows following:

Receipts

Material shifting charges	Rs.4,00,52,652
Miscellaneous income	Rs. 6,839
Interest income on FD	Rs. 15,492
Interest income on RBI bonds	Rs. 16,00,000
SBI Interest income	Rs. 14,26,477
Total	<u>Rs.4,31,01,460</u>
Expenditure	<u>Rs.3,78,31,844/-</u>
Net profit	<u>Rs. 52,69,616/-</u>

9.1 The assessee during the course of search admitted additional income of Rs.1 crore and filed the return of income at Rs.1,52,25,800/- for various lapse and discrepancy found during the course of search. In spite of this, the AO made further addition towards unproved trade liabilities at Rs.1,88,48,325/-/. In our opinion, the ld. CIT(A) has considered the entire facts and

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circumstances of the case in the light of order of the Tribunal in the case of Smt. G. Vijaya cited (supra), wherein the facts and circumstances are similar and sustained addition of Rs.25 lakhs. In this action of the ld. CIT(A), we do not find any infirmity and the same is confirmed. The appeal of the revenue as well as CO by assessee are dismissed.

10. In the result, all the appeals of the assessee and the appeal of the revenue are dismissed.

Order pronounced in the open court on 17th Aug, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 17th Aug, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.